

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA**

Alexandria Division

UNITED STATES OF AMERICA)	
)	
v.)	Criminal No. 1:17-CR-00154 (TSE)
)	
KEVIN PATRICK MALLORY,)	
)	
Defendant)	

**GOVERNMENT’S OPPOSITION TO DEFENSE MOTION TO
CONTINUE TRIAL UNTIL MAY 29, 2018**

The government hereby opposes Defendant Kevin Patrick Mallory’s Motion to Continue Trial Until May 29, 2018 (“Mot. to Continue”), filed April 24, 2018. The government stands ready to proceed to trial on the current trial date of May 15, 2018. In support of its opposition the government states as follows:

1. One of its key witnesses retires from his government service as of May 25, 2018 (the same week he is currently scheduled to testify). This witness will be testifying as an original classification authority (“OCA”) as to the classification level and potential harm from release of certain government information. In addition, the government intends to move to certify this witness as an expert with training and experience in the parameters for human intelligence operations. This specialized area of expertise is not interchangeable with that of other OCA’s at his agency. This witness will be read out of his various government security

clearances and step down from his position as one of the few OCA's at his agency no later than May 25, 2018.

2. In addition, the government intends to call in the range 15-20 separate witnesses, each of whom will need to be consulted as to their availability for a later trial date. All of the currently identified government witnesses have confirmed their availability for the May 15 trial date.
3. Further, as previously noted for the Court, one of the prosecutors on this matter will be on an extended medical leave starting no later than July 7, 2018. The closer this matters proceeds to that date, the higher the possibility the prosecution team loses a team member during trial.
4. Given that the defense team's core concern is the pending May 1, 2018 expert disclosure deadline, the government is amenable to pushing out that deadline to accommodate the defense expert's review. The government would provide its expert disclosure on the schedule May 1, 2018 date. The government proposes the defense delay their disclosure until Friday, May 11, 2018, which is two business days before trial rather than the currently ordered 10 business days. The benefit to the defense team of this proposal is twofold: it would have the requisite additional time for its expert to complete his work and it would have the added benefit of having the government's expert disclosure over a week before it would have to comply with its reciprocal obligation.

Accordingly, the government objects to Defendant's proposed delay of trial. Instead, the government moves this Court to deny the Defense Motion to Continue, proceed with the May 15,

2018 trial date, and amend the scheduling order to allow the defense to delay production of its expert disclosure until May 11, 2018.

April 24, 2018

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that I have caused an electronic copy of the *GOVERNMENT'S OPPOSITION TO DEFENSE MOTION TO CONTINUE TRIAL UNTIL MAY 29, 2018* to be served via ECF upon counsel for Defendant Kevin Patrick Mallory.

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